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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

**OBJECTION TO TRUSTEE'S REVISED DETERMINATION OF CLAIM**

Richard Roth, by and through his attorneys, hereby objects to the Trustee's Notice of Trustee's Revised Determination of Claim dated November 18, 2010 ("Determination Letter"), attached as Exhibit 1, on the same basis as his original objection, and such original objection is attached as Exhibit 2.

Dated: December 16, 2010

s/ Jonathan M. Landers  
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# **EXHIBIT 1**

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S REVISED DETERMINATION OF CLAIM**

November 18, 2010

Richard Roth (IRA)  
107 Village Clubhouse Circle  
Jupiter, Florida 33458

Dear Richard Roth (IRA):

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee previously determined your claims on BLMIS Account No. 1R0103 designated as Claim No. 000711 and Claim No. 009177 pursuant to a Notice of Trustee's Determination of Claim dated April 26, 2010 (the "Prior Notice"). Based on information coming to the Trustee's attention subsequent to the issuance of the Prior Notice, the April 3, 1995 transfer from BLMIS Account No. 1R0061 has been adjusted to \$398,121.62 from \$381,986.38, resulting in a new deposit total of \$398,121.62. The foregoing changes resulted in an adjustment of the overdrawn amount to \$2,447,878.38 from \$2,464,013.62. This Notice of Trustee's Revised Determination of Claim contains the corrected deposit total and the corrected adjusted overdrawn balance of \$2,447,878.38.

This Notice of Trustee's Revised Determination of Claim supersedes the Prior Notice and serves as the Trustee's revised determination with respect to BLMIS Account No. 1R0103 designated as Claim No. 000711 and Claim No. 009177 (the latter of which is duplicative of Claim No. 000711) and combined (the "Combined Claim") for purposes of this determination.

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<sup>1</sup> Section 78111(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78111(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

Your Combined Claim for securities is **DENIED**. No securities were ever purchased for your account.

Based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$2,846,000.00), as more fully set forth in Table 1 annexed hereto and made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$398,121.62). As noted, no securities were ever purchased by BLMIS for your account. Any and all profits reported to you by BLMIS on account statements were fictitious.

As reflected in Table 1, certain of the transfers into or out of your account have been adjusted. As part of the Trustee's analysis of accounts, the Trustee has assessed accounts based on a money in/money out analysis (i.e., has the investor deposited more or less than he or she withdrew from BLMIS). This analysis allows the Trustee to determine which part of an account's balance is originally invested principal and which part is fictitious gains that were fabricated by BLMIS. A customer's allowed claim is based on the amount of principal in the customer's account.

Whenever a customer requested a transfer from one account to another, the Trustee analyzed whether the transferor account had principal in the account at the time of the transfer. The available principal in the account was transferred to and credited in the transferee account. Thus, the reason that the adjusted amount of transferred deposits or withdrawals in Table 1 is less than the purported transfer amount is that the transferor account did not have sufficient principal available to effectuate the full transfer. The difference between the purported transfer amount and the adjusted transfer amount is the amount of fictitious gain that was transferred to or from your account. Under the money in/money out analysis, the Trustee does not give credit for fictitious gains in settling your allowed claim.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$2,447,878.38) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your Combined Claim is **DENIED** in its entirety.

On March 1, 2010, the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) issued a decision which affirmed the Trustee's Net Investment Method for determining customer claims. The final resolution of this issue is expected to be determined on appeal.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Revised Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim redetermined in accordance with any such Court order.

**PLEASE TAKE NOTICE:** The objection you previously filed in connection with the Prior Notice will be deemed an objection to the Notice of Trustee's Revised Determination of Claim ("Revised Notice"). You do not need to file another objection to the Revised Notice.

**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court **and** the Trustee within **THIRTY DAYS** after November 18, 2010, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

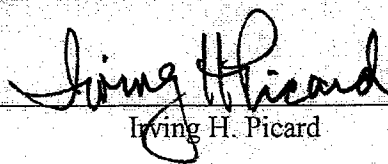
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111

  
Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities

cc: Millennium Trust Company, LLC  
FBO Richard Roth (41151)  
820 Jorie Blvd., Suite 420  
Oak Brook, Illinois 60523

Table 1			
DEPOSITS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
4/3/1995	Rollover Trans from 1R006110	\$1,375,669.15	\$398,121.62
4/12/1995	Rollover Trans from 1R006110	\$784,105.56	\$0.00
<b>Total Deposits:</b>		\$2,159,774.71	\$398,121.62
WITHDRAWALS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
1/4/1996	CHECK	(\$148,000.00)	(\$148,000.00)
12/30/1996	CHECK	(\$148,000.00)	(\$148,000.00)
12/29/1997	CHECK	(\$148,000.00)	(\$148,000.00)
12/23/1998	CHECK	(\$148,000.00)	(\$148,000.00)
12/27/1999	CHECK	(\$148,000.00)	(\$148,000.00)
1/11/2001	CHECK	(\$148,000.00)	(\$148,000.00)
12/18/2001	CHECK	(\$148,000.00)	(\$148,000.00)
4/11/2002	CHECK	(\$100,000.00)	(\$100,000.00)
12/12/2002	CHECK	(\$200,000.00)	(\$200,000.00)
9/12/2003	CHECK	(\$75,000.00)	(\$75,000.00)
12/16/2003	CHECK	(\$100,000.00)	(\$100,000.00)
5/12/2004	CHECK	(\$60,000.00)	(\$60,000.00)
8/19/2004	CHECK	(\$50,000.00)	(\$50,000.00)
12/20/2004	CHECK	(\$100,000.00)	(\$100,000.00)
3/17/2005	CHECK	(\$75,000.00)	(\$75,000.00)
10/12/2005	CHECK	(\$60,000.00)	(\$60,000.00)
12/13/2005	CHECK	(\$100,000.00)	(\$100,000.00)
8/9/2006	CHECK	(\$50,000.00)	(\$50,000.00)
12/8/2006	CHECK	(\$100,000.00)	(\$100,000.00)
3/12/2007	CHECK	(\$150,000.00)	(\$150,000.00)
6/13/2007	CHECK	(\$60,000.00)	(\$60,000.00)
9/19/2007	CHECK	(\$50,000.00)	(\$50,000.00)
10/9/2007	CHECK	(\$30,000.00)	(\$30,000.00)
12/14/2007	CHECK	(\$100,000.00)	(\$100,000.00)
3/5/2008	CHECK	(\$100,000.00)	(\$100,000.00)
6/6/2008	CHECK	(\$200,000.00)	(\$200,000.00)
10/9/2008	CHECK	(\$50,000.00)	(\$50,000.00)
<b>Total Withdrawals:</b>		(\$2,846,000.00)	(\$2,846,000.00)
<b>Total deposits less withdrawals:</b>		(\$686,225.29)	(\$2,447,878.38)

# **EXHIBIT 2**



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*Attorneys for Richard Roth*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM**

Richard Roth by and through his attorneys, hereby objects to the Notice of Trustee's Determination of Claim dated April 29, 2010 ("Determination Letter"), attached as Exhibit A, as described herein.

### **BACKGROUND**

1. Richard Roth is a "customer," as defined by the Securities Investor Protection Act of 1970 ("SIPA"), of Bernard L. Madoff Investment Securities, LLC ("BMIS").

2. Richard Roth's final BMIS statement for Account Number 1R0103, dated November 30, 2008, states that he owns securities valued at \$7,876,846.76 ("Final BMIS Statement").

3. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See Order, Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee ("BMIS Trustee"), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; 15 U.S.C. 78fff-1(a).

4. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See Order* [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS's customers in accordance with the Court's Order.

5. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee "shall

notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” See Order at 6 (emphasis added) [Dkt. No. 12].

6. On or about May 21, 2009, Richard Roth submitted a customer claim form to SIPC for Account Number 1R0103 (Exhibit B) (“Mr. Roth’s Customer Claim”).<sup>1</sup> Richard Roth’s Final BMIS Statement was submitted with his Customer Claim. See Mr. Roth’s Customer Claim (Exhibit B).

7. On April 26, 2010, the BMIS Trustee sent Richard Roth the Determination Letter disallowing his claim in its entirety, rather than allowing the claim in the amount of \$7,876,846.76, the total amount that he claimed. See Determination Letter (Exhibit A).

8. Richard Roth hereby objects to the Determination Letter for the reasons described below.

#### **GROUND FOR OBJECTION**

9. First Objection. The Determination Letter fails to comply with this Court’s December 23, 2008 Order, which directs the BMIS Trustee to satisfy customer claims and deliver securities in accordance “with the Debtor’s books and records.” Dec. 23, 2008 Order at 5 [Dkt. No. 12]. Included with Richard Roth’s Customer Claim was his final BMIS statement showing a final balance of \$7,876,846.76. See the Customer Claim (Exhibit B). The Final BMIS statement is the best evidence of the amount owed based on the Debtor’s books and records. Accordingly, the claim should be allowed in the full amount of \$7,876,846.76.

10. Second Objection. The Trustee has set forth no legal basis for disallowing Richard Roth’s Customer Claim in full as filed. The only explanations set forth in the Determination Letter are that (1) “[n]o securities were ever purchased for your account,” and (2)

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<sup>1</sup> In accordance with the Court’s Order dated October 20, 2009 [Dkt. No. 533], Claimant’s personal identification data has been redacted from Exhibit B.

“the amount of money you withdrew from your account at BLMIS \*\*\* is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$381,986.38).” Determination Letter at 1 (Exhibit A). Neither of these purported grounds for disallowance have any statutory or other legal basis. Moreover, the Determination Letter:

(a) does not clearly provide “the reason” for the disallowance, as required by the Court’s December 23, 2008 Order, *see* Order [Dkt. No. 12];

(b) is inadequate to rebut the prima facie validity of the Customer Claim as provided in Section 502(a) of the Bankruptcy Code and Fed. R. Bankr. P. 3001(f); and

(c) violates general principles of applicable law requiring that an objection to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based. *See, e.g.*, Collier on Bankruptcy ¶ 3007.01(3) (15th ed.) (“[A]n objection to a claim should . . . meet the [pleading] standards of an answer. It should make clear which facts are disputed; it should allege facts necessary to affirmative defenses; and it should describe the theoretical bases of those defenses.”); *In re Enron Corp.*, No. 01-16034, 2003 Bankr. LEXIS 2261, at \*25 (Bankr. S.D.N.Y. Jan. 13, 2003) (same).

11. Third Objection. 15 U.S.C. Section 78fff-2(b) provides that a customer’s claim shall be allowed in the amount of the customer’s “net equity.” 15 U.S.C. § 78fff-2(b). Upon information and belief, the Trustee objects to the Customer Claim on the ground that “net equity” should be determined by principal contributed to the account less any withdrawals, without regard to any gains reflected in the Final BMIS Statement or prior BMIS statements. *See* Determination Letter Table 1. *See also* Memorandum Of Law In Support Of Trustee’s Motion For An Order Upholding Trustee’s Determination Denying “Customer” Claims For Amounts Listed On Last Customer Statement, Affirming Trustee’s Determination Of Net Equity, And

Expunging Those Objections With Respect To The Determinations Relating To Net Equity,  
dated October 16, 2009 [Dkt. No. 525]. This is incorrect for the following reasons:

(a) The Trustee's construction of the statute ignores SIPA's express language  
which defines "net equity" as

the dollar amount of the account or accounts of a customer, to be  
determined by --

(A) calculating the sum which would have been owed by the  
debtor to such customer if the debtor had liquidated, by sale or  
purchase on the filing date, all securities positions of such  
customer (other than customer name securities reclaimed by such  
customer); minus

(B) any indebtedness of such customer to the debtor on the filing  
date;

\*\*\*\*\*

15 U.S.C. § 78lll(11). The Trustee's proposed formulation has no support in the language of the  
statute or interpreting case law and in fact, adds words and concepts to the statute which do not  
exist.<sup>2</sup>

(b) SIPA's legislative history emphasizes Congress' intention that the statute  
protect customer expectations by ensuring that customers of retail brokerage firms can rely on  
their account statements. The BMIS statements received by Richard Roth stated that he owned a  
list of blue chip securities. It makes no difference whether the securities were purchased:

A customer generally expects to receive *what he believes* is in his  
account at the time the stockbroker ceases business. But because  
securities may have been lost, improperly hypothecated,  
misappropriated, *never purchased*, or even stolen, it is not always  
possible to provide to customers that which they expect to receive,

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<sup>2</sup> Richard Roth is, of course, aware of the Court's Memorandum Decision dated March 1, 2010  
[Dkt. No. 1999] regarding the Trustee's determination of "net equity." However, for the reasons  
set forth herein, Richard Roth respectfully believes that the Court's March 1, 2010 ruling is  
incorrect and will be overturned on appeal.

that is, securities which they maintained in their brokerage account. . . . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy customers' legitimate expectations . . . .

S. Rep. No. 95-763, at 2 (1978) (emphasis added). While there may be a basis to disallow customer claims for wholly fictitious securities of nonexistent entities, here the securities set forth on Richard Roth's Final BMIS Statement and prior statements were those of actual companies listed on the stock exchange.

(c) Richard Roth deposited funds in BMIS in the expectation the amount would grow, his account statements showed such growth, and the balance on his Final BMIS Statement reflects the benefit of this bargain. The Trustee's formula is an improper and wholly inadequate measure of loss. In *Visconsi v. Lehman Brothers, Inc.*, 244 Fed. Appx. 708 (6th Cir. 2007), the Court declined to set aside an arbitration award that appeared to have applied an expectancy measure of damages against a successor in a Ponzi scheme case, and rejected the "money in/money out" formula as not reflecting the expectations of the parties. The Court explained:

Lehman's out-of-pocket theory misapprehends the harm suffered by Plaintiffs and the facts of this case. Plaintiffs gave \$21 million to Gruttadauria [the dishonest broker], not to hide under a rock or lock in a safe, but for the express purpose of investment, with a hope -- indeed a reasonable expectation -- that it would grow. Thus, the out-of-pocket theory, which seeks to restore to Plaintiffs only the \$21 million they originally invested less their subsequent withdrawals, is a wholly inadequate measure of damages. Had Gruttadauria invested Plaintiffs' money as requested, their funds would like grown immensely, especially considering that Plaintiffs invested primarily throughout the mid-1990s, which, had they hired an honest broker . . . , would have placed their money in the stock market during one of the strongest markets in recent memory. In fact, the fictitious statements issued by Lehman, which were designed to track Plaintiffs' funds as if they had been properly invested, indicate that Plaintiffs' accounts would have grown to more than \$37.9 million (even accounting for the

withdrawal of more than \$31.3 million). Plaintiffs thus could have reasonably believed that they were entitled to the full \$37.9 million balance shown, regardless of the amounts of their previous deposits and withdrawals.

*Visconsi*, 244 Fed. Appx. at 713-14 (emphasis added). This applies precisely to the Richard Roth's claim.

(d) The Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's president and CEO, and its actions in similar liquidation proceedings. For example, in the *New Times* SIPA liquidation, in the context of discussing claims filing deadlines, Harbeck acknowledged that SIPC would replace securities listed on customer account statements, even if the securities had never been purchased:

Harbeck: [I]f you file within sixty days, you'll get the securities, without question. Whether -- if they triple in value, you'll get the securities. . . . Even if they're not there.

Court: Even if they're not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted --

Harbeck: And the securities were never purchased.

Court. Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-38, *In re New Times Securities Services, Inc.*, No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000) (Exhibit C). The Second Circuit's discussion of SIPC's claims processing in *New Times* further indicates that, with respect to customers who thought they were invested in listed securities, SIPC paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled . . . to believe that they were investing in mutual funds that in reality existed were treated much more favorably. Although they were not actually invested in those real funds -- because Goren never executed the transactions -- the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be "securities claims" eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the "securities claimants," . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

*In re New Times Secs. Servs.*, 371 F.3d 68, 74 (2d Cir. 2004); *see also* Brief of Appellant SIPC at 23-24, *In re New Times Sec. Servs., Inc.*, No. 05-5527 (Dec. 30, 2005) (arguing that under SIPA "reasonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional reality" such as when the customer receives a confirmation reflecting a purchase, "even where the purchase never actually incurred and the debtor instead converted the cash deposited by the claimant to fund that purchase").<sup>3</sup> Richard Roth is situated no differently from the "securities claimants" discussed by the Second Circuit. Accordingly, his claim should be recognized in full.

12. In the event that the Court should determine that claimed gains on deposited funds should not be allowed, then in the alternative, Richard Roth is entitled to recover interest on such deposited amounts. Such interest is required as a matter of state law, and the United States Supreme Court has determined that in bankruptcy cases, creditor claims, including the right to interest, are determined by state law. *See Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S.

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<sup>3</sup> There are similar statements in S. Rep. No. 95-763, at 2 (1978) (SIPA seeks to make customers whole even if securities of customers are "lost . . . misappropriated, never purchased or even stolen"); H.R. Rep. No. 95-746, at 21 (1977) (customer expects to receive what he believes is in his account even if securities were "never purchased").



443, 450-51 (2007) (“[W]e have long recognized that the ‘basic federal rule’ in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt’s estate to state law.”).

(a) Under New York law, which is applicable here, funds deposited with the Debtors under these circumstances are entitled to interest. *See, e.g.*, N.Y.C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, *et seq.* Accordingly, Customer claims should be recalculated by adding interest to all funds deposited by customers such as Richard Roth.

(b) Under New York law, which is applicable here, customers are entitled to prejudgment interest and any returns the Debtors earned on the deposited funds under principles of unjust enrichment. Accordingly, Customer claims should be recalculated by adding the amounts earned by the Debtors on Richard Roth’s deposits. *See, e.g., Steinberg v. Sherman*, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at \*14-15 (S.D.N.Y. May 2, 2008) (“Causes of action such as . . . conversion and unjust enrichment qualify for the recovery of prejudgment interest.”); *Eighteen Holding Corp. v. Drizin*, 701 N.Y.S.2d 427, 428 (1st Dep’t 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

13. Fourth Objection. The BMIS Trustee’s action in reducing the amount shown on the Customer Claim by any prior gains reflected on his final BMIS statement or prior BMIS statements is an attempt to avoid such gains without alleging any grounds for avoidance or proving that such gains are avoidable under the Bankruptcy Code’s avoidance provisions. As such, any such disallowance is improper and unjustified, and the Determination Letter should be stricken. *See* Fed. R. Bankr. P. 7001(1); 7008.

14. Fifth Objection. The Trustee’s determination assumes that BMIS never earned funds and therefore all gains reported to customers were “fictitious.” This assumption is

contrary to fact. There is significant evidence that, at some time, BMIS was at least in part a legitimate business and therefore all or a portion of the gains were not fictitious. The burden is on the Trustee to show that BMIS never earned any amounts to support customer gains and, if at some point it did earn funds, the dates when it ceased to do so. The Trustee is required to state and prove when the Ponzi scheme began.

15. Sixth Objection. Richard Roth was required to pay significant income taxes on distributions which the Trustee has alleged are fictitious. The Trustee has justified his proposed method of calculating claims is fair and reasonable because fictitious gains should not compete dollar for dollar with claims for funds actually deposited by customers, and his proposed method equalizes the treatment of all customers. This justification is not correct insofar as customers did not have the use of reported but fictitious gains because of required income tax payments. Even assuming *arguendo* the Trustee's method is correct, Richard Roth's customer claims should be adjusted by adding all amounts he actually paid as income taxes on allegedly fictitious gains to equalize his treatment with that of other customers. See *SEC v. Byers*, No. 08-7104, 2009 U.S. Dist. LEXIS 63741, at \*11-13 (S.D.N.Y. 2009) (in equitable distribution proceeding, allowing claims for reinvestment of fictitious profits to equitably treat reinvesting customers as compared with customers receiving distributions).

16. Seventh Objection. The Determination Letter purports to calculate the "net equity" for Richard Roth's BMIS account on the basis of certain withdrawal and deposit transactions for which Richard Roth has no records. Many of the transactions in question allegedly occurred more than ten years ago. It is unreasonable to anticipate the customers would maintain records of accounts for long periods of time given (a) general limitations on record retention requirements under tax law and other applicable rules governing record retention; (b)

the apparent safety and solvency of BMIS as acknowledged by the United States Securities and Exchange Commission and other securities agencies which had investigated the affairs of BMIS; and (c) the fact that historical records such as those in question are usually available from financial institutions, including broker-dealers, upon request. Under these circumstances, the Trustee should be required to prove that the alleged withdrawal transactions occurred by furnishing the appropriate records to Richard Roth and, absent such records, such transactions should be deleted from the calculation of Richard Roth's "net equity." Likewise, the Trustee should be required to prove that all deposit transactions are completely listed by furnishing the appropriate records to the Richard Roth.

#### **RELIEF REQUESTED**

17. For the reasons stated herein, Richard Roth's Customer Claim should be allowed in its entirety.

18. For the reasons stated herein, the Court should direct SIPC to issue immediate payment to Richard Roth in the amount of \$500,000.00 plus interest from the date of the Determination Letter without imposing conditions to payment which are not authorized or warranted.

19. The BMIS Trustee's determination amounts to an improper disallowance of a claim that has prima facie validity. *See* Bankruptcy Code § 502(a). The BMIS Trustee has offered no factual or legal basis for his Determination. The BMIS Trustee's Determination Letter, and the objections contained therein, should be stricken, or alternatively, the BMIS Trustee should describe his position in detail including all relevant facts, legal theories, and authorities. Upon the filing of such a statement, this matter will be a contested proceeding under Rule 9014, and Richard Roth will file a response.

20. Richard Roth requests such other relief as may be just and equitable.

### CONCLUSION

21. Richard Roth reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of Richard Roth's right to object on any additional grounds.

22. Richard Roth reserves all rights set forth Rule 9014, including, without limitation, rights of discovery. *See* Fed. R. Bankr. P. 9014.

23. Richard Roth reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

24. Richard Roth incorporates by reference all reservations of rights set forth in the Customer Claim.

Dated: May 10, 2010

s/ Jonathan M. Landers  
MILBERG LLP  
Jonathan M. Landers  
Matthew Gluck  
Brad N. Friedman  
Sanford P. Dumain  
Jennifer L. Young  
One Pennsylvania Plaza, 48th Fl.  
New York, NY 10119  
Tel: (212) 594-5300  
Fax: (212) 868-1229

SEEGER WEISS LLP  
Stephen A. Weiss  
Christopher M. Van DeKieft  
Parvin Aminolroaya  
One William Street  
New York, NY 10004  
Telephone: (212) 584-0700  
Facsimile: (212) 584-0799

*Attorneys for Plaintiff Richard Roth*

## **Exhibit A**

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008<sup>1</sup>**

**NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM**

April 26, 2010

Richard Roth (IRA)  
107 Village Clubhouse Circle  
Jupiter, Florida 33458

Dear Richard Roth (IRA):

**PLEASE READ THIS NOTICE CAREFULLY.**

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claims on BLMIS Account No. 1R0103 designated as Claim Number 711 and Claim Number 9177 (the latter of which is duplicative of Claim Number 711) and combined ("Combined Claim") for purposes of this determination. This letter shall serve as the Trustee's determination with respect to the Combined Claim:

Your Combined Claim securities is **DENIED**. No securities were ever purchased for your account.

Further, based on the Trustee's analysis, the amount of money you withdrew from your account at BLMIS (total of \$2,846,000.00), as more fully set forth in Table 1 annexed hereto and

---

<sup>1</sup> Section 78lll(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78lll(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

made a part hereof, is greater than the amount that was deposited with BLMIS for the purchase of securities (total of \$381,986.38). As noted, no securities were ever purchased by BLMIS for your account. Any and all profits reported to you by BLMIS on account statements were fictitious.

As reflected in Table 1, certain of the transfers into or out of your account have been adjusted. As part of the Trustee's analysis of accounts, the Trustee has assessed accounts based on a money in/money out analysis (i.e., has the investor deposited more or less than he or she withdrew from BLMIS). This analysis allows the Trustee to determine which part of an account's balance is originally invested principal and which part is fictitious gains that were fabricated by BLMIS. A customer's allowed claim is based on the amount of principal in the customer's account.

Whenever a customer requested a transfer from one account to another, the Trustee analyzed whether the transferor account had principal in the account at the time of the transfer. The available principal in the account was transferred to and credited in the transferee account. Thus, the reason that the adjusted amount of transferred deposits or withdrawals in Table 1 is less than the purported transfer amount is that the transferor account did not have sufficient principal available to effectuate the full transfer. The difference between the purported transfer amount and the adjusted transfer amount is the amount of fictitious gain that was transferred to or from your account. Under the money in/money out analysis, the Trustee does not give credit for fictitious gains in settling your allowed claim.

Since there were no profits to use either to purchase securities or to pay you any money beyond the amount that was deposited into your BLMIS account, the amount of money you received in excess of the deposits in your account (\$2,464,013.62) was taken from other customers and given to you. Accordingly, because you have withdrawn more than was deposited into your account, you do not have a positive "net equity" in your account and you are not entitled to an allowed claim in the BLMIS liquidation proceeding. Therefore, your Combined Claim is **DENIED** in its entirety.

**On March 1, 2010, the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) issued a decision which affirmed the Trustee's Net Investment Method for determining customer claims. The final resolution of this issue is expected to be determined on appeal.**

**Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.**

Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by the Trustee against you.



**PLEASE TAKE NOTICE:** If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after April 26, 2010, the date on which the Trustee mailed this notice.

**PLEASE TAKE FURTHER NOTICE:** If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

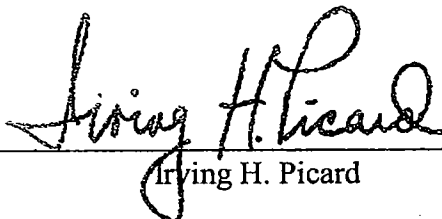
**PLEASE TAKE FURTHER NOTICE:** If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

**PLEASE TAKE FURTHER NOTICE:** You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for  
the Southern District of New York  
One Bowling Green  
New York, New York 10004

and

Irving H. Picard, Trustee  
c/o Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111

  
Irving H. Picard

Trustee for the Liquidation of the Business of  
Bernard L. Madoff Investment Securities

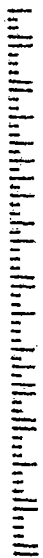
cc: Millenium Trust Company  
FBO Richard Roth  
820 Jorie Blvd., Suite 420  
Oak Brook, IL 60523

DEPOSITS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
4/3/1995	Rollover Trans from 1R006110	\$1,375,669.15	\$381,986.38
4/12/1995	Rollover Trans from 1R006110	\$784,105.56	\$0.00
<b>Total Deposits:</b>		\$2,159,774.71	\$381,986.38
WITHDRAWALS			
DATE	TRANSACTION DESCRIPTION	AMOUNT	ADJUSTED AMOUNT
1/4/1996	CHECK	(\$148,000.00)	(\$148,000.00)
12/30/1996	CHECK	(\$148,000.00)	(\$148,000.00)
12/29/1997	CHECK	(\$148,000.00)	(\$148,000.00)
12/23/1998	CHECK	(\$148,000.00)	(\$148,000.00)
12/27/1999	CHECK	(\$148,000.00)	(\$148,000.00)
1/11/2001	CHECK	(\$148,000.00)	(\$148,000.00)
12/18/2001	CHECK	(\$148,000.00)	(\$148,000.00)
4/11/2002	CHECK	(\$100,000.00)	(\$100,000.00)
12/12/2002	CHECK	(\$200,000.00)	(\$200,000.00)
9/12/2003	CHECK	(\$75,000.00)	(\$75,000.00)
12/16/2003	CHECK	(\$100,000.00)	(\$100,000.00)
5/12/2004	CHECK	(\$60,000.00)	(\$60,000.00)
8/19/2004	CHECK	(\$50,000.00)	(\$50,000.00)
12/20/2004	CHECK	(\$100,000.00)	(\$100,000.00)
3/17/2005	CHECK	(\$75,000.00)	(\$75,000.00)
10/12/2005	CHECK	(\$60,000.00)	(\$60,000.00)
12/13/2005	CHECK	(\$100,000.00)	(\$100,000.00)
8/9/2006	CHECK	(\$50,000.00)	(\$50,000.00)
12/8/2006	CHECK	(\$100,000.00)	(\$100,000.00)
3/12/2007	CHECK	(\$150,000.00)	(\$150,000.00)
6/13/2007	CHECK	(\$60,000.00)	(\$60,000.00)
9/19/2007	CHECK	(\$50,000.00)	(\$50,000.00)
10/9/2007	CHECK	(\$30,000.00)	(\$30,000.00)
12/14/2007	CHECK	(\$100,000.00)	(\$100,000.00)
3/5/2008	CHECK	(\$100,000.00)	(\$100,000.00)
6/6/2008	CHECK	(\$200,000.00)	(\$200,000.00)
10/9/2008	CHECK	(\$50,000.00)	(\$50,000.00)
<b>Total Withdrawals:</b>		(\$2,846,000.00)	(\$2,846,000.00)
<b>Total deposits less withdrawals:</b>		(\$686,225.29)	(\$2,464,013.62)

Baker & Hostetler LLP  
3200 National City Center  
1900 East 9th Street  
Cleveland, OH 44114-3485

RICHARD ROTH (IRA)  
107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER, FLORIDA 33458

3345837826 C093



UNITED STATES POSTAGE  
\$00.44<sup>0</sup>  
02 1M  
0004245726  
APR 26 2010  
MAILED FROM ZIP CODE 44114

## **Exhibit B**

**CUSTOMER CLAIM**

Claim Number \_\_\_\_\_

Date Received \_\_\_\_\_

**BERNARD L. MADOFF INVESTMENT SECURITIES LLC**

In Liquidation

**DECEMBER 11, 2008**

**REDACTED**

(Please print or type)

Name of Customer: Richard Roth

Mailing Address: 107 Village Clubhouse Circle

City: Jupiter State: FL Zip: 33458

Account No.: 1-R0103

Taxpayer I.D. Number (Social Security No.): -8252

**NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.**

\*\*\*\*\*

**1. Claim for money balances as of December 11, 2008:**

- a. The Broker owes me a Credit (Cr.) Balance of \$ 0.00
- b. I owe the Broker a Debit (Dr.) Balance of \$ 0.00
- c. If you wish to repay the Debit Balance,  
please insert the amount you wish to repay and  
attach a check payable to "Irving H. Picard, Esq.,  
Trustee for Bernard L. Madoff Investment Securities LLC."  
If you wish to make a payment, it must be enclosed  
with this claim form. \$ 0.00
- d. If balance is zero, insert "None." None

2. Claim for securities as of **December 11, 2008**:

**PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.**

	<u>YES</u>	<u>NO</u>
a. The Broker owes me securities	<u>✓</u>	
b. I owe the Broker securities		<u>✓</u>
c. If yes to either, please list below:		

		<u>Number of Shares or Face Amount of Bonds</u>	
<u>Date of Transaction (trade date)</u>	<u>Name of Security</u>	<u>The Broker Owes Me (Long)</u>	<u>I Owe the Broker (Short)</u>
<u>See Nov. 30, 2008 R0103 statements, attached hereto as Exhibit A</u>			
<u>\$7,991,766.76 (market value of securities long , per R0103-3 statement)</u>			
<u>278,850.00 (market value of securities long, per R0103-4 statement)</u>			
<u>(393,770.00) ( market value of securities short, per R0103-4 statement)</u>			
<b>Total</b>	<b>\$7,876,846.76</b>		

**Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or information regarding any withdrawals you have ever made or payments received from the Debtor.**

See Exhibits A and B, and documents submitted herewith.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

**PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.**

**NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.**

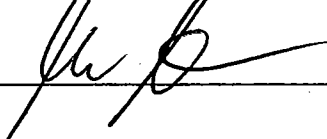
	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____✓
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____✓
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____✓
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____✓
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____✓
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____✓
9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? if so, give name of that broker.	_____	_____✓

Please list the full name and address of anyone assisting you in the preparation of this claim form: Stephanie Hatzakos, Esq.,  
Milberg LLP, One Pennsylvania Plaza, New York, NY 10119

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

**IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.**

**THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.**

Date 5/21/09 Signature   
Date \_\_\_\_\_ Signature \_\_\_\_\_

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

**This customer claim form must be completed and mailed promptly,  
together with supporting documentation, etc. to:**

Irving H. Picard, Esq.,  
Trustee for Bernard L. Madoff Investment Securities LLC  
Claims Processing Center  
2100 McKinney Ave., Suite 800  
Dallas, TX 75201



## **Exhibit A**

**BERNARD L. MADOFF**  
INVESTMENT SECURITIES, LLC

New York ☐ London

★DUPLICATE★ FOR ACCOUNT NTC & CO.  
RICHARD ROTH

885 Third Avenue  
New York, NY 10022  
(212) 230-2424  
800 384-1318  
Fax (212) 838-4061

107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER FL 33458

Affiliated with  
Madoff Securities International Limited  
12 Berkeley Street  
Mayfair London W1J 8DT  
Tel 020 7493 6222

PENDING  
11/30/08

PAGE  
1

YOUR ACCOUNT NUMBER  
1-R0103-3-0

YOUR TAXPAYER IDENTIFICATION NUMBER  
\*\*\*\*\*6253

BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
			BALANCE FORWARD		478,214.82	
7,098		195	WELLS FARGO & CO NEW	29,800	211,803.40	
5,070		697	HEWLETT PACKARD CO	34,900	177,145.00	
4,394		4521	WAL-MART STORES INC	55,830	245,492.02	
2,873		5023	INTERNATIONAL BUSINESS MACHS	87,270	250,840.71	
10,647		8847	EXXON MOBILE CORP	72,880	776,378.36	
11,661		9949	INTEL CORP	14,510	169,667.11	
5,577		13675	JOHNSON & JOHNSON	59,580	332,500.66	
7,605		18000	J.P. MORGAN CHASE & CO	38,530	293,324.65	
4,056		22326	COCA COLA CO	44,660	181,302.96	
2,366		26652	MCDONALDS CORP	55,370	131,099.42	
4,394		30978	MERCK & CO	28,550	125,623.70	
16,055		35304	MICROSOFT CORP	21,810	350,801.55	
8,112		39630	ORACLE CORPORATION	17,300	140,661.60	
3,211		52608	PEPSICO INC	56,410	181,260.51	
1,859		53110	APPLE INC	100,780	187,424.02	
13,689		56934	PFIZER INC	16,940	232,438.66	
3,211		57436	ABBOTT LABORATORIES	54,610	175,480.71	
6,084		61260	PROCTER & GAMBLE CO	64,080	390,105.72	
2,197		61762	AMGEN INC	59,160	130,061.52	
4,225		65586	PHILLIP MORRIS INTERNATIONAL	43,600	184,379.00	
10,140		66088	BANK OF AMERICA	21,590	219,327.60	
3,380		69212	QUALCOMM INC	33,770	114,277.60	
10,985		70414	CITI GROUP INC	12,510	137,861.35	
			CONTINUED ON PAGE 2			

**BERNARD L. MADOFF**  
INVESTMENT SECURITIES LLC  
New York London

\*DUPLICATE\*\* FOR ACCOUNT NTC & CO.  
RICHARD ROTH

107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER FL 33458

885 Third Avenue  
New York, NY 10022  
(212) 230-2224  
800 334-1343  
Fax (212) 838-4061

Affiliated with  
Madoff Securities International Limited  
12 Berkeley Street  
Mayfair, London W1J 8DT  
Tel: 020 7498 6222

PERIOD ENDING  
11/30/08

PAGE  
2

YOUR ACCOUNT NUMBER  
1-R0103-3-0

YOUR TAXPAYER IDENTIFICATION NUMBER  
\*\*\*\*\*6253

BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
2 2,535		74238	SCHLUMBERGER LTD	49.480	125,532.80	
2 6,084		74740	COMCAST CORP	16.510	100,689.84	
2 11,999		78564	CL A	27	324,452.00	
2 3,042		79066	WATF INC	52.510	159,856.42	
2 2,028		82890	CONDOPHTIPS	52.040	105,618.12	
2 12,337		83392	UNITED PARCEL SVC INC			
2 3,549		87216	CLASS B	16.730	206,891.01	
2 4,225		87718	CISSCO SYSTEMS INC	29.530	104,942.97	
2 2,028		91542	U S BANCORP	73.430	310,410.75	
2 21,463		92044	CHEVRON CORP	53.160	107,889.48	
2 5,746		95868	UNITED TECHNOLOGIES CORP	19.630	422,176.69	
2 507		96370	GENERAL ELECTRIC CO	30.410	174,964.86	
	50,000	20118	VERIZON COMMUNICATIONS	337.400	171,031.80	49,971.00
			GOOGLE	99.942		
			U S TREASURY BILL			
			DUE 12/18/2008			
	7,675,000	22805	U S TREASURY BILL	99.936		7,670,098.00
			DUE 2/12/2009			
			2/12/2009			
			FIDELITY SPARTAN			
			U S TREASURY MONEY MARKET	DIV		2.19
			DIV 11/15/08			
	7,192	17905	FIDELITY SPARTAN			7,192.00
			U S TREASURY MONEY MARKET			
			CONTINUED ON PAGE 3			



**BERNARD L. MADOFF**  
INVESTMENT SECURITIES LLC  
New York • London

885 Third Avenue  
New York, NY 10022  
(212) 230-2224  
(800) 384-1346

\*\*DUPLICATE\*\* FOR ACCOUNT NTC & CO.  
RICHARD ROTH

107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER FL 33458

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Madoff Securities International Limited  
12 Berkeley Street  
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Tel: 020-7493 6222

PERIOD ENDING  
11/30/08

PAGE  
3

YOUR ACCOUNT NUMBER  
1-R0103-3-0

YOUR TAX PAYER IDENTIFICATION NUMBER  
\*\*\*\*\*6253

BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
2 39,350		27274	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	39,350.00	
9			FIDELITY SPARTAN U S TREASURY MONEY MARKET	DIV		4.83
9	39,350	52741	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1		39,350.00
9 525,000		57282	U S TREASURY BTL DUE 03/26/2009	99.926	524,611.50	
9 21,068		61779	FIDELITY SPARTAN U S TREASURY MONEY MARKET	1	21,068.00	
			NEW BALANCE		950,400.87	
11,999			SECURITY POSITIONS	MKT PRICE		
3,211			AT&T INC	28.560		
2,197			ABBOTT LABORATORIES	52.390		
1,859			AMGEN INC	55.540		
10,140			APPLE INC	92.670		
4,225			BANK OF AMERICA	16.250		
12,337			CHEVRON CORP	79.010		
10,985			CISCO SYSTEMS INC	16.540		
4,056			CITIC GROUP INC	18.290		
			COCA COLA CO	46.870		
			CONTINUED ON PAGE 6			

**MADOFF SECURITIES INTERNATIONAL LIMITED**  
12 Berkeley Street  
Mayfair, London W1J 8DT  
Tel: 020 7493 6222

885 Third Avenue  
New York, NY 10022  
(212) 230-2124  
1-800-234-1343  
Box 212, 838 4061

**BERNARD L. MADOFF**  
INVESTMENT SECURITIES INC  
New York, NY 10022

\*\*DUPLICATE\*\* FOR ACCOUNT NTC & CO.  
RICHARD ROTH

107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER FL 33488

PAGE 4

PERIOD ENDING  
11/30/08

YOUR ACCOUNT NUMBER  
1-20103-3-0

YOUR INVESTMENT IDENTIFICATION NUMBER  
\*\*\*\*\*6253

TE	BOUGHT REQUIRED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	6,084			COMCAST CORP	17.340		
	3,042			CL A			
	10,647			CONOCOPHILIPS	52.520		
	21,463			EXXON MOBIL CORP	80.150		
	507			GENERAL ELECTRIC CO	17.170		
	5,070			GOOGLE	292.960		
	11,661			HEWLETT PACKARD CO	35.280		
	2,873			INTEL CORP	13.680		
	7,605			INTERNATIONAL BUSINESS MACHS	81.600		
	5,577			J.P. MORGAN CHASE & CO	31.660		
	2,366			JOHNSON & JOHNSON	58.580		
	4,394			MCDONALDS CORP	58.750		
	16,055			MERCK & CO	26.720		
	8,112			MICROSOFT CORP	20.220		
	3,211			ORACLE CORPORATION	16.090		
	13,689			PERSICO INC	56.760		
	4,225			PFIZER INC	16.430		
	6,084			PHILIP MORRIS INTERNATIONAL	42.160		
	3,380			PROCTER & GAMBLE CO	64.350		
	2,535			QUALCOMM INC	38.510		
	21,068			SCHLUMBERGER LTD	50.740		
				FIDELITY SPARTAN	1		
				U.S. TREASURY MONEY MARKET			
				U.S. BANCORP			
				UNITED PARCEL SVC INC	26.980		
				CLASS B	57.600		
				CONTINUED ON PAGE 5			



Affiliated with  
Maddoff Securities International Limited  
12 Berkeley Street  
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885 Third Avenue  
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**BERNARD L. MADOFF**  
INVESTMENT SECURITIES LLC  
New York, NY London

\*\*DUPLICATE\*\* FOR ACCOUNT NTC & CO.  
RICHARD ROTH

107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER FL 33458

PERIOD ENDING 11/30/08  
YOUR ACCOUNT NUMBER 1-R0103-3-0  
YOUR STATE IDENTIFICATION NUMBER \*\*\*\*\*6253  
PAGE 5

DATE	BOUGHT RECEIVED	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
	525,000			U S TREASURY BILL DUE 03/26/2009	99.971		
	2,028			3/26/2009 UNITED TECHNOLOGIES CORP	48.530		
	5,746			VERIZON COMMUNICATIONS	32.650		
	4,394			WAL-MART STORES INC	55.880		
	7,098			WELLS FARGO & CO NEW	28.890		
				MARKET VALUE OF SECURITIES			
				LONG 7,991,766.76			
				SHORT			





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RICHARD ROTH

107 VILLAGE CLUBHOUSE CIRCLE  
JUPITER FL 33458

PAGE  
1

PERIOD ENDING  
11/30/08

YOUR TAXPAYER IDENTIFICATION NUMBER  
\*\*\*\*\*6253

YOUR ACCOUNT NUMBER  
1-R0103-4-0

	BOUGHT REBATES	SOLD DELIVERED	TRN	DESCRIPTION	PRICE OR SYMBOL	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
				BALANCE FORWARD			478,215.00
12		169	42956	S & P 100 INDEX	15.800		266,851.00
12	169		48282	NOVEMBER 460 CALL	17.800	300,989.00	
19		169	34386	S & P 100 INDEX	26		439,231.00
19	169		38711	DECEMBER 430 CALL	30	507,169.00	
19	169		43036	S & P 100 INDEX	3	50,869.00	
19		169	47361	NOVEMBER 450 PUT	37		625,131.00
				NEW BALANCE			950,401.00
				SECURITY POSITIONS			
		169		S & P 100 INDEX	MKT PRICE 23.300		
	169			DECEMBER 430 CALL			
				S & P 100 INDEX	16.500		
				DECEMBER 420 PUT			
				MARKET VALUE OF SECURITIES			
				LONG			
				SHORT			
				278,850.00			393,770.00



## **Exhibit B**

**EXHIBIT B**

1. This Claim Form, exhibits, and supporting documentation (collectively "Claim Form") is submitted pursuant to the December 23, 2008 Order of the Honorable Burton R. Lifland and the instructions disseminated by Irving H. Picard, Trustee for Bernard L. Madoff Investment Securities LLC ("Trustee"), on December 11, 2008.
2. The information provided in the Claim Form is based on the information provided in the Claimant's latest Madoff account statement and any additional information known by the Claimant as of the date of the submission of the Claim Form. The Claimant reserves the right to amend and/or supplement this Claim Form upon the receipt of further information, or upon request by the Trustee for additional information.
3. The Claimant reserves the right to amend the Claim Form in the event of any recoveries by the Trustee or any other party under the avoidance powers of the Bankruptcy Code or otherwise, or in the event of rejections of executory contracts pursuant to Bankruptcy Code Section 365, whether such amendments are made pursuant to Bankruptcy Code Sections 105, 502(g), or 502(h), Bankruptcy Rule 3002(c)(3), (4), other provisions of applicable bankruptcy law, or general principles of law and equity.
4. The Claimant hereby requests that the Claim Form be considered as a proof of claim in *In re Bernard L. Madoff Investment Securities LLC*, No. 08-01789 (Bankr. S.D.N.Y.).
5. This Claim Form is required to be submitted pursuant to the Court's January 2, 2009 Order and the Trustee's instructions to the Claimant. To the extent permitted by the applicable law, the Claimant does not consent to the jurisdiction of the Bankruptcy Court nor does Claimant waive any right to trial by jury.
6. The Claimant reserves all rights, claims, and/or defenses as to and/or against any and all parties potentially liable for the losses sustained by the Claimant, including, without limitation, Bernard L. Madoff Investment Securities LLC and its owners, partners, employees, and affiliates, as well as any potentially liable third parties including, without limitation, investment advisors, "feeder funds," accountants, and auditors.
7. The Claimant further reserves all rights, claims, and/or defenses as to and/or against any persons and/or creditors asserting claims against Bernard L. Madoff Investment Securities LLC, its employees, owners, and/or affiliates, in bankruptcy or otherwise.
8. The Claimant reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever, notwithstanding the submission of any such information to the Trustee.
9. To the extent the Claimant has disclosed to the Trustee documents containing accounting and/or legal advice, the Claimant does not waive any potential privileges applicable thereto.

Claimant: *Richard Roth*

10. The Claimant reserves all rights with respect to submitting information to the Internal Revenue Service regarding gains, losses, and/or theft of assets.
11. The Claim Form and supporting documents contain confidential information. The Claimant submits this information to the Trustee subject to the condition that this information will not be disclosed to any third parties, other than under seal to the Court, absent the Claimant's express consent or Court order.
12. During the lifetime of the account, the Claimant may have contributed and/or withdrawn sums of money. The Claimant's final account balance set forth in Exhibit A takes into account any such contributions and/or withdrawals. Claimant continues to search for additional documents relating to such contributions or withdrawals and reserves the right to supplement this submission if additional documents are found.
13. The Claimant submits herewith documents in support of the Claimant's claim. The Claimant reserves any arguments that such documents are not relevant to the Trustee's inquiry. The Claimant further reserves the right to supplement this submission, including the submission of additional documents if deemed necessary. Below is a list of the documents submitted herewith:

**2008**

- BMIS account statements for time period ending 11/30/08.

## **Exhibit C**

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

-----  
In the Matter of: )

NEW TIMES SECURITIES )  
SERVICES, INC. )

Debtor )  
-----

1) Application filed by proposed class claimants to  
authorize and approve the filing of a class proof of claim  
and for a certification of the putative class and to  
shorten time for the hearing

Memorandum by proposed class claimants

Memorandum by Plaintiff Securities Investor Protection  
Corporation

Memorandum of law by Trustee James W. Giddens

Affidavit of Derek J. T. Adler in opposition

United States Bankruptcy  
Court  
Westbury, New York

July 28, 2000  
10:00 a.m.

B E F O R E:

HONORABLE STAN BERNSTEIN  
United States Bankruptcy Judge

A P P E A R A N C E S:

HUGHES HUBBARD & REED LLP  
Attorney for James W. Giddens, Trustee  
One Battery Park Plaza  
New York, New York 10004  
BY: JAMES W. KOBAK, JR., ESQ.  
DANIEL S. LUBELL, ESQ.

(516) 741-5342 Tankoos Reporting Co. (212) 349-9692

1 THE COURT: Okay, so, you're telling me that  
2 this is very different from the open transaction.

3 MR. HARBECK: Correct.

4 THE COURT: Okay, so, now we're dealing with a  
5 closed transaction, where the money is there, you have  
6 interest in a --

7 MR. HARBECK: The securities are there.

8 THE COURT: -- real --

9 MR. HARBECK: Not the money is there. The  
10 securities are supposed to be there.

11 THE COURT: No, no -- yeah, you have -- you  
12 have an ownership interest in the securities; namely,  
13 shares of the mutual fund, of a mutual fund that is real,  
14 existing as of the petition date.

15 MR. HARBECK: Dreyfus, Janus, you name it.

16 THE COURT: Okay.

17 MR. HARBECK: Now, what Congress did is it said  
18 it wants to give the Trustee and SIPC a very good idea of  
19 what securities have to -- that the Trustee is going to  
20 have to go out into the marketplace and buy. So, if you  
21 file within sixty days, you'll get the securities, without  
22 question. Whether -- if they triple in value, you'll get  
23 the securities.

24 But, if --

25 THE COURT: Even -- even if --

MR. HARBECK: Even if they're not there.

THE COURT: Even if they're not there.

MR. HARBECK: Correct.

THE COURT: In other words, if the money was diverted, converted --

MR. HARBECK: And the securities were never purchased.

THE COURT: Okay.

MR. HARBECK: And, if those positions triple, we will gladly give the people their securities positions.

THE COURT: But, you've got to jump.

MR. HARBECK: But, you've got to act fast, yeah. And, Congress did that --

THE COURT: Because -- because --

MR. HARBECK: -- because of the fluctuations.

THE COURT: -- because there's a concern -- because there's a concern that the value of this mutual fund might skyrocket and it's going to cost SIPC a lot more money.

MR. HARBECK: Six months down the line, that's right.

THE COURT: Okay, all right. And, you don't want people playing games with you.

MR. HARBECK: That's correct.

THE COURT: Deciding when they're going to --

**CERTIFICATE OF SERVICE**

I, Jonathan M. Landers, certify that on the 11th day of May, 2010, I caused a true and correct copy of the foregoing OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM (Richard Roth 1-R0103) to be filed and served on the parties to this action via electronic filing.

In addition, service was effectuated to the following address via Federal Express:

Irving H. Picard, Trustee  
c/o Baker Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10011

s/ Jonathan M. Landers